



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG-2011-0563]

RIN 1625-AA01

Special Anchorage Areas; Port of New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to (1) establish two special anchorage areas along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin; (2) establish two special anchorage areas on Sandy Hook Bay at Atlantic Highlands, NJ; (3) disestablish the western special anchorage area in Sheepshead Bay, NY; and (4) disestablish the Captain of the Port New York Commercial Mooring Buoy permit regulations and table displaying the mooring anchor, chain, and pendant requirements. This proposed action is necessary to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more than 65 feet in length. This action is intended to increase the safety of life and property in New York City and Atlantic Highlands, NJ, improve the safety of anchored

vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0563 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION

section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone 718-354-4195, e-mail [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Lieutenant Junior Grade Isaac Slavitt, Waterways Management Division at Coast Guard First District, telephone 617-223-8385, e-mail [Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0563), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material

online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-0563" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will

consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0563" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice

regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The proposed rule is intended to reduce the risk of vessel collisions by establishing two special anchorage areas in the Hudson River near the 79<sup>th</sup> Street Boat Basin, Manhattan, NY; establishing two special anchorage areas in Sandy Hook Bay at Atlantic Highlands, NJ; requiring all vessels and anchors to remain entirely within the northern and southern special anchorage areas in Sheepshead Bay, NY; and reducing the illegal mooring of vessels and dinghies to

New York City property by disestablishing the western special anchorage area at Sheepshead Bay, NY. The proposed rule is also intended to reduce the confusion among professional and recreational mariners by disestablishing the Captain of the Port New York Commercial Mooring Buoy permit regulations and Table § 110.155(1)(7) displaying the mooring anchor, chain, and pendant requirements. These regulations are in conflict with current U.S. Army Corps of Engineers Federal regulations as well as New Jersey and New York local and State laws and regulations.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish two new special anchorage areas on the Hudson River at the request of New York City Parks and Recreation Department (NYC PARKS).

NYC PARKS requested these particular areas be designated as special anchorage areas as they have been historically used as mooring fields by recreational vessels, are no longer within the boundaries of Anchorage Ground 19 East or 19 West decreasing the knowledge of their presence to other mariners transiting the area, and are within waters under the jurisdiction of New York City.

The proposed rule would establish a special anchorage area to the north and south of the 79<sup>th</sup> Street Boat Basin along the Manhattan shoreline of the Hudson River,

maintaining anchorage for approximately 126 vessels in two currently designated mooring fields. The first of these areas is approximately 530 yards by 170 yards, encompasses 18.40 square acres, and is about 160 yards south of the 79th Street Boat Basin. The second of these areas is approximately 2,630 yards by 160 yards, encompasses 89.90 square acres, and is north and adjacent to the 79th Street Boat Basin.

The Coast Guard proposes to establish two new special anchorage areas on Sandy Hook Bay within the boundary of the Atlantic Highlands Municipal Harbor. The Borough of Atlantic Highlands requested these particular areas be designated as special anchorage areas because they have been historically used as mooring fields by recreational vessels, are within waters under the jurisdiction of the Borough of Atlantic Highlands, and would allow tenants to leave their anchor lights off during hours of darkness. The majority of their tenants do not stay on their vessels at night. Leaving their lights on overnight could result in dead batteries and inoperable bilge pumps, which could in turn result in vessels taking on water and sinking, disrupting other tenants in the area.

The proposed rule would establish two special anchorage areas inside the charted breakwater at Atlantic Highlands,



NJ, on Sandy Hook Bay, maintaining anchorage for approximately 195 vessels in two currently designated mooring fields. The first area is approximately 1,060 yards by 250 yards, encompasses about 51.7 square acres, and is about 100 yards north of the Atlantic Highlands Municipal Harbor. The second area is approximately 465 yards by 215 yards, encompasses about 19.7 square acres, and is east of and adjacent to the Atlantic Highlands Municipal Harbor.

The proposed rule would establish a new requirement that all vessels and anchors remain within the northern and southern special anchorage areas in Sheepshead Bay, NY at all times. During times of high winds, vessels moored near the edge of these special anchorage areas were observed swinging out into Sheepshead Bay, interfering with the transit of chartered fishing boats to and from their NYC-managed piers to the west. Since moored vessels in a special anchorage area are exempt from the Inland Rules of the Road [Rule 30 and Rule 35 (33 CFR 83)], vessels swinging outside the special anchorage area boundaries create a high risk of collision with larger charter fishing vessels and event vessels that transit past these special anchorage areas, especially at night and during times of inclement weather. Also, when larger charter fishing

vessels and event vessels maneuver to avoid colliding with recreation vessels that swing outside the special anchorage area, it creates a hazardous, close-quarters situation with two categories of vessels:

- (1) other larger charter fishing vessels and event vessels operating between these two special anchorage areas, and
- (2) recreational vessels swinging outside of the opposite special anchorage area.

The Coast Guard also proposes to disestablish the western special anchorage area in Sheepshead Bay, NY at the request of NYC Parks. NYC Parks reports that vessels are using this special anchorage area to circumvent the guest mooring options maintained by the Sheepshead Bay boating clubs under the authority of NYC Parks. NYC Parks reports that these vessel owners secure their dinghies to the surrounding sea walls, commercial piers, or pedestrian foot bridge while the owners go ashore. This is prohibited by New York City laws and regulations and the dinghies have been confiscated by NYC Parks. This area is approximately 375 yards by 80 yards that encompasses about 6.27 square acres and is near the western end of Sheepshead Bay.

This rule would disestablish the Captain of the Port New York Commercial Mooring Buoy permit regulations at 33 CFR 110.155(l)(8), along with Table § 110.155(l)(7) displaying

the mooring anchor, chain, and pendant requirements. The commercial mooring buoy permits are now issued by the United States Army Corps of Engineers (USACE) under the authority of 33 CFR 322 and 33 CFR 330. The co-location of many commercial Anchorage Grounds and recreational special anchorage areas in many locations has caused confusion with many mariners regarding the issuance of these permits. As special anchorage areas are located along the shoreline they fall within the jurisdiction of the States of New Jersey and New York. Both New Jersey and New York have State Coastal Zone Management or State Navigation regulations with jurisdiction over the placement and permitting of recreational mooring buoys. Removing these mooring buoy permit regulations would reduce confusion among professional and recreational mariners, and remove federal regulations that conflict with USACE regulations as well as New Jersey and New York State laws and regulations.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, New York District, located at 26 Federal Plaza, New York, NY 10278. For permitting information, mariners should contact the NYC Parks Brooklyn Permit Office at (718) 965-8975. For guest moorings and access to/from the eastern special anchorage areas mariners may contact the following boating clubs:

Miramar Yacht Club (718) 769-3548; Port Sheepshead (917) 731-8607; or Sheepshead Yacht Club (718) 891-0991.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: normal surface navigation will not be affected as the special anchorage areas on the Hudson River and Sandy Hook Bay have historically been used as mooring fields by NYC Parks and the town of Atlantic Highlands, NJ.

The regulation requiring all vessels anchoring in Sheepshead Bay, NY to remain entirely within the northern and southern special anchorage areas at all times has the potential to reduce the number of vessels that are able to anchor within the special anchorage areas. However, this is necessary to maintain an open area for larger charter fishing vessels and event vessels transiting to and from NYC Parks maintained fishing piers to the west.

Disestablishing the western special anchorage area in Sheepshead Bay, NY would reduce the area available for mooring recreational vessels; however, NYC Parks requested this action in order to reduce the illegal mooring of vessels and dinghies to NYC property while the vessel owners/operators are ashore. These vessels would still be able to anchor on transient vessel moorings in the northern and southern special anchorage areas in Sheepshead Bay, NY.

We expect minimal additional cost impacts on the tug and barge operators because this rule would disestablish USCG permitting regulations that are currently under the jurisdiction of the District Engineer, U.S. Army Corps of Engineers.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would

have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational and small fishing vessels intending to anchor in the Hudson River, Sandy Hook Bay, NJ, and Sheepshead Bay, NY. The proposed rule would not have a significant economic impact on a substantial number of small entities for the the same reasons outlined above in the "Executive Order 12866 and Executive Order 13563" section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in



sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy

action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. We believe the proposed rule would be categorically excluded, under figure 2-1, paragraph (34)(f) of the Instruction because it involves the establishment, and disestablishment, of special anchorage areas and anchorage ground regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary environmental analysis checklist is available in the docket where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 110

Anchorage Grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.60 to read as follows:

§ 110.60 Captain of the Port, New York.

\* \* \* \* \*

(c) \* \* \*

(12) 79th Street Boat Basin South. All waters of the Hudson River enclosed by a line beginning at the northwest corner of the 70th Street pier at approximate position 40°46'47.10"N, 073°59'29.13"W; thence to 40°47'02.60"N, 073°59'17.88"W; thence to 40°46'59.73"N, 073°59'13.01"W; thence along the shoreline and pier to the point of beginning.

(13) 79th Street Boat Basin North. All waters of the Hudson River enclosed by a line beginning on the shoreline near West 110<sup>th</sup> Street at approximate position 40°48'21.06"N, 073°58'15.72"W; thence to 40°48'21.06"N, 073°58'24.00"W; thence to 40°47'14.70"N, 073°59'09.00"W; thence to 40°47'11.84"N, 073°59'08.90"W; thence along the breakwater and shoreline to the point of beginning.

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (c)(12) and (c)(13) of this section will be under the supervision, and at the discretion, of the local Harbor Master appointed by the City of New York. Mariners may contact the boat basin on VHF CH 9 or at (212) 496-2105 for mooring and anchoring availability. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

(ii) [Reserved.]

(d) \* \* \*

(6) [Reserved.]

\* \* \* \* \*

(8) \* \* \*

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (d)(7) and (d)(8) of this section will be under the supervision, and at the discretion, of the local Harbor Master appointed by the City of New York. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage. For permitting information mariners should contact the NYC Parks Brooklyn Permit Office at (718) 965-

8975. For guest moorings and access to and from the anchorage areas described in paragraphs (d)(7) and (d)(8) mariners may contact the following boating clubs: Miramar Yacht Club (718) 769-3548; Port Sheepshead (917) 731-8607; or Sheepshead Yacht Club (718) 891-0991.

(ii) [Reserved].

\* \* \* \* \*

(11) Atlantic Highlands North. All of the waters of Sandy Hook Bay enclosed by a line beginning on the breakwater at approximate position 40°25'08.56"N, 074°01'19.66"W; thence to 40°25'01.59"N, 074°01'22.70"W; thence to 40°25'06.97"N, 074°01'59.80"W; thence to 40°25'11.93"N, 074°02'01.54"W thence along the breakwater to the point of origin.

(12) Atlantic Highlands South. All of the waters of Sandy Hook Bay enclosed by a line beginning on the shoreline at approximate position 40°24'53.97"N, 074°01'32.49"W; thence to 40°24'59.86"N, 074°01'31.07"W; thence to 40°25'02.20"N, 074°01'48.60"W; thence to 40°24'57.42"N, 074°01'50.53"W; thence along the shoreline to the point of origin.

(i) Mariners using the anchorage areas described in paragraphs (d)(11) and (d)(12) must contact the local harbormaster, to ensure compliance with any additional applicable state and local laws.

(ii) [Reserved]

(e) Datum. All positions are NAD 1983.

3. Revise § 110.155 to read as follows:

§ 110.155 Port of New York.

\* \* \* \* \*

(1) \* \* \*

(8) Operations near commercial mooring buoys permitted by the District Engineer, U.S. Army Corps of Engineers.

(i) No vessel shall continuously occupy a mooring when a vessel in regular traffic requires the berth or when navigation would be menaced or inconvenienced thereby.

(ii) No vessel shall moor or anchor in any anchorage in such a manner as to interfere with the use of a duly authorized mooring buoy. Nor shall any vessel moored to a buoy authorized by the District Engineer, U.S. Army Corps of Engineers be moored such that any portion of that vessel comes within 50 feet of a marked or dredged channel.

(iii) No vessel shall be operated within the limits of an anchorage at speed exceeding 6 knots when in the vicinity of a moored vessel.

(iv) In an emergency the Captain of the Port may shift the position of any unattended vessel moored in or near any anchorage.

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Dated: January 23 2012

D. A. Neptun  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

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